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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,859	12/22/2003	Dagmar Ommerborn	60150.0001US01	9096

7590 03/14/2007  
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EXAMINER
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CHOI, PETER Y

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/743,859

Applicant(s)

OMMERBORN, DAGMAR

Examiner

Peter Y. Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-5, 7-12, 15-17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7-12, 15-17 and 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## FINAL ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ribbed surface and the smooth surface must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

2. Claim 26 is objected to because of the following informalities: claim 26 recites “a specific basic weight.” It is presumed that Applicant intended to claim “a specific basis weight.” Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-5, 7-12, 15-17, and 19-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claim 26 recites that the self-windable cable-wrapping adhesive tape comprises a tape-shaped carrier and a pressure-sensitive adhesive coating on one side of the carrier. The claim further recites specifications including “a material thickness in the range from 0.1 to 1.0 mm ... a specific basis weight in the range of 40 to 200 g/m<sup>2</sup> and .... a breaking strength extension in the longitudinal direction of not more than 60%.” However, it is unclear whether the recited specifications refer to the self-windable cable-wrapping adhesive tape as a whole, comprising the carrier and adhesive coating, or whether the recited specifications refer only to the carrier.

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant’s specification defines velvet as a pile fabric (Applicant’s specification, page 2 lines 8-21). However, claim 15, dependent on claim 26 which recites a pileless plain

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warp knit two yarn system, recites threads having a velvet construction. It is unclear how a thread with a velvet construction, which Applicant defines as being a pile fabric, may form a pileless fabric.

Appropriate corrections are required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 5, 8-12, 16, 17, and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,406,990 to Rochford.

Regarding claims 3, 5, 8-12, 16, 17, and 19-26, Rochford teaches a self-windable cable-wrapping adhesive tape comprising a tape-shaped carrier and a pressure-sensitive adhesive coating on one side of the carrier, the carrier consisting of a pileless plain warp knit two-yarn system having a ribbed surface on one side and a smooth surface on the other side (see entire document including page 1 lines 45-60, page 2 lines 1-20, page 2 lines 90-116).

Regarding claims 3, 5, 8-12, 16, 17, and 19-26, Rochford does not appear to teach the claimed material thickness, specific basis weight, and grammage of adhesive coating. However, absent unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to create a tape having the claimed specifications in regards to thickness, basis weight and adhesive weight since it has been held that where general conditions

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of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the material thickness, basis weight and adhesive weight in order to create a self-adhering tape with optimal flexibility and strength.

Regarding claims 3, 5, 8-12, 16, 17, and 19-26, Rochford does not appear to teach the claimed breaking strength extension in the longitudinal direction. Although the prior art does not disclose the claimed breaking strength extension, the claimed property is deemed to be inherent to the structure in the prior art since the Rochford reference teaches an invention with a similar structural and chemical composition (i.e. a warp knitted fabric having a pressure sensitive adhesive coating comprising the same yarns with a similar range of linear density) as the claimed invention. Properties are the same when the structure and composition are the same. The burden is on the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980). Additionally, the claimed property would obviously have been present once the Rochford product is provided.

Regarding claims 12 and 23, the carrier comprises polyester fiber yarn, other synthetic fiber yarns, or a blend fiber yarn of synthetic fibers, wherein the polyester fiber yarn is composed of PET, the other synthetic fiber yarn are of polyamide or polyacrylonitrile, and the blend fiber yarn is of PET/PA (page 1 lines 85-90).

Regarding claims 16, 24 and 25, the yarn has a linear density of 10-100 denier (page 1 lines 85-90).

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Regarding claims 3, 8-11, 21 and 22, Rochford does not appear to disclose the claimed basis weights, grammage of the adhesive, material thickness, stitch density, and wale density. Absent unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to create a tape having the claimed specifications since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the material thickness, basis weight and adhesive weight in order to create a self-adhering tape with optimal flexibility and strength.

Regarding claims 5, 17, 19, and 20, Rochford does not appear to teach the claimed breaking strength, breaking extension and bond strength on steel. Although the prior art does not disclose the claimed properties, the claimed properties are deemed to be inherent to the structure in the prior art since the Rochford reference teaches an invention with a similar structural and chemical composition as the claimed invention. Properties are the same when the structure and composition are the same. The burden is on the Applicants to prove otherwise. *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980). Additionally, the claimed property would obviously have been present once the Rochford product is provided.

#### ***Response to Arguments***

8. Applicant's arguments filed December 18, 2006, have been fully considered but they are not persuasive.

First, Applicant argues that one of ordinary skill in the cable-wrapping adhesive tape art would not have found it obvious to look in the adhesive-bandage art and then to modify nearly every feature of the adhesive bandage since the intended applications of the two products are different.

Second, Applicant argues that the claimed carrier consisting of a two-yarn system having a ribbed surface on one side and a smooth surface on the other side represents a structural limitation due to the beneficial result of the structural arrangement.

Third, Applicant argues that the breaking extension of the Rochford bandage is greater than the Applicant's claimed extension.

Fourth, Applicant argues that the claimed adhesive tape includes a carrier consisting of a two-yarn system and one of ordinary skill in the art would not have derived all the characteristics of the claimed carrier and adhesive coating in the combination of Claim 28.

Fifth, Applicant argues that nothing in Rochford teaches or suggests a cable-wrapping adhesive tape having a carrier consisting exactly of a two-yarn system, as now claimed.

Sixth, Applicant argues that no amount of changes in degree resulting from routine variation would have foreseeably resulted in a cable-wrapping adhesive tape containing the claimed limitations for thickness, adhesive weight, basis weight, and so on.

9. Regarding Applicant's first argument, Examiner respectfully disagrees. Applicant states that the claimed invention is a cable-wrapping adhesive tape designed for wrapping object such as cables in automobiles, pipes, or like elongate objects (Applicant's specification, page 1 lines 30-36). However, it appears that the cable-adhesive tape described by Applicant refers to the invention of DE 10102927A1, not the Applicant's invention. Additionally, although Example 1



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of Applicant's specification teaches a hand-tearable cable winding tape, Applicant does not teach that the claimed invention is intended to be used on cables in automobiles, pipes, or like elongate objects. Furthermore, Example 2 of Applicant's specification teaches a textile adhesive tape comprising a tricot knit fabric with a pressure-sensitive adhesive coating having the specifications defined in Table 2, which structurally and compositionally is substantially similar to the structure and composition disclosed in Rochford. Therefore, one of ordinary skill in the art at the time the invention was made would have looked to the pressure-sensitive adhesive tape art in order to find a structure and composition based on the intended purpose of forming a hand-tearable and less costly to manufacture adhesive tape.

Lastly, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. For the reasons set forth above, the Rochford invention comprising a warp-knitted fabric with a pressure-sensitive adhesive would presumably be capable of performing the intended use.

Regarding Applicant's second argument, Examiner respectfully disagrees. Applicant's specification discloses that a warp knit and a pure or combined tricot knit are suitable knits for the claimed invention which would presumably inherently comprise a ribbed surface side and a smooth surface side. Rochford teaches that a warp-knitted fabric formed from a tricot knitting machine is suitable for the invention of Rochford, which would also presumably inherently comprise a ribbed surface side and a smooth surface side. Additionally, USPN 5,605,729 to Mody is cited to show that forming a pressure-sensitive adhesive layer on the smooth side of a

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tricot knit surface was obvious at the time the invention was made (Mody, column 2 lines 21-58, column 4 lines 23-41, column 5 line 55 to column 6 line 9, column 6 lines 34-55, Figure 3).

Regarding Applicant's third argument, Examiner respectfully disagrees. Applicant argues that absent a teaching in the art, the difference between the breaking extension of the claimed invention and of the invention in Rochford in a different field of use constitutes more than merely discovering the optimum or workable ranges as the rejection asserts. However, Rochford teaches that in the art, the stretch and recovery properties may be altered at will since the inherent stretch of the yarns may be increased or reduced by the way in which the yarns are knitted into the fabric (Rochford, page 2 lines 39-52). Furthermore, Rochford teaches that the reason why the stretch and recovery properties may be altered is to permit the avoidance of strangulation in use, which is particularly desirable with elastic fabric bandages. Applicant appears to teach a similar method of achieving the breaking extension, stating that warp knits are used due to the degree of extensibility. Therefore, the breaking extension in Rochford, based on the teachings of Rochford, appears to be an optimizable variable.

Regarding Applicant's fourth argument, Examiner respectfully disagrees. First Applicant refers to the claimed carrier combination and adhesive coating in the combination of Claim 28. It appears that the Applicant intended to note the combination of claim 26. Second, the Applicant argues that the warp-knitted fabric of Rochford is produced on Rachelle knitting machines to produce the bandage. However, while Rochford teaches that a Rachelle knitting machine is preferred, Rochford also teaches that a Tricot knitting machine is suitable for the invention of Rochford (page 2 lines 12-20), which is similarly suitable for the claimed invention, wherein the tricot knitted warp-knit fabric would presumably inherently have a ribbed side and a

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smooth side. Additionally, Rochford teaches the use of a two-yarn system for the carrier in the Example. Furthermore, USPN 6,808,587 to Böhm is cited to show that the additional characteristics set forth in claim 26 would have been obvious to one of ordinary skill in the pressure-sensitive adhesive art at the time the invention was made since the invention of Rochford and the invention of Böhm comprise a knitted fabric with a pressure-sensitive adhesive layer (Böhm, column 1 lines 5-8, column 2 lines 19-41, column 3 lines 30-58, column 4 lines 1-24).

Regarding Applicant's fifth argument, Examiner respectfully disagrees. Rochford teaches the use of a two-yarn system for the carrier in the Example.

Regarding Applicant's sixth argument, Examiner respectfully disagrees. Rochford teaches an invention with substantially similar structure and composition as the claimed invention. Additionally, as set forth above, routine variation of the invention of Rochford would have resulted in an adhesive capable of cable wrapping as claimed. Absent further evidence that the aforementioned patents to Mody and Böhm are not in the pressure-sensitive adhesive art and that the invention of Rochford is incapable of comprising the combined specifications of Mody and Bohm, the variations of the invention of Rochford would have been routine to one of ordinary skill in the art at the time the invention was made.

### ***Claim Rejections - 35 USC § 103***

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rochford, as applied to claims 3, 5, 8-12, 16, 17, and 19-26 above, in view of USPN 5,762,623 to Murphy.

Regarding claim 4, Rochford does not appear to teach that the adhesive tape is hand tearable in the cross direction. However, Murphy is directed to an elastic bandage comprising a warp-knitted fabric with a pressure-sensitive adhesive which is hand tearable (Murphy, Abstract, column 3 lines 6-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form a hand tearable tape of Rochford, as suggested by Murphy, motivated by the desire to easily create a tape with the desired length depending on end use.

#### *Response to Arguments*

11. Applicant's arguments filed December 18, 2006, have been fully considered but they are not persuasive. Applicant argues that the invention of Rochford modified by Murphy is not hand-tearable. Additionally, Applicant argues that the claimed characteristics of the present invention, as to material thickness and specific basis weight of the carrier, the grammage of the adhesive coating, and the breaking strength of the tape, combine to produce hand-tearability.

Examiner respectfully disagrees. Both the inventions of Rochford and Murphy refer to the bandage art comprising at least a warp-knitted fabric with a pressure-sensitive adhesive (Rochford, page 2 lines 21-30; Murphy, Abstract, column 3 lines 6-35). As both the inventions are within the same art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look to similar bandages in the art for advantageous properties, such as hand-tearability, motivated by the desire to create a tape with the desired length depending on end use.

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Furthermore, as set forth above, the claimed characteristics of the invention, as to material thickness and specific basis weight of the carrier, the grammage of the adhesive coating, and the breaking strength of the tape, are obvious to optimize, as displayed in the Mody and Böhm references, or are inherent to the structure and composition of the invention once the combined invention is formed.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rochford, as applied to claims 3, 5, 8-12, 16, 17, and 19-26 above, in view of "Solvent-Free Radiation-Curable Polyacrylate Pressure-Sensitive Adhesive Systems" by Z. Czech, et al.

Regarding claim 7, although Rochford teaches that the adhesive coating can comprise conventional rubber-resin adhesives, polyvinyl ether adhesives or acrylate adhesives (Rochford, page 2 lines 65-75), Rochford does not appear to teach that the adhesive is UV crosslinked.

Czech teaches that there is a broad spectrum for UV-crosslinkable polyacrylate hot-melt pressure sensitive adhesives including medical or hygiene products such as bandaids because of their excellent adhesion and good skin compatibility (page 190, column 2).

It would have been obvious to one of ordinary skill in the art to UV crosslink the adhesive of Rochford as suggested by Czech, motivated by the desire to improve the adhesion strength of the adhesive layer.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rochford, as applied to claims 3, 5, 8-12, 16, 17, and 19-26 above, in view of USPN 4,881,383 to Spillane.

Regarding claim 15, Rochford does not appear to teach that the knit includes fixed stitches with a lapping structure having a combination of threads in a velvet construction and thread in a pillar stitched construction to provide a tearable knit. However, Spillane teaches a warp knitted fabric having a satin-effect by warp knitting a set of yarns in a stitch pattern extending underlaps of the yarn at the technical back of the fabric. The underlaps will provide a surface appearance of a satin weave. Spillane teaches that the another set of warp yarns may be knitted in a jersey, chain or other plain stitch pattern at the technical face of the fabric as a substrate or ground to provide structural integrity to the fabric (column 1). See Figure 1 for satin stitch and chain stitch or pillar stitch configurations. Spillane notes that the fabric has a glossy satin face (column 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the satin stitch with the chain stitch of Rochford, as suggested by Spillane, motivated by the desire to create a bandage with structural integrity.

#### *Response to Arguments*

14. Applicant's arguments filed December 18, 2006, have been fully considered but they are not persuasive. Applicant argues that if one used the stitches disclosed by Spillane in the Rochford surgical bandage, a carrier of that surgical bandage would not remain a two-yarn system. Additionally, Applicant argues that nothing in the proposed combination would have produced a cable-wrapping adhesive tape having a ribbed surface and a smooth surface and having the recited adhesive coating located immediately on the smooth surface.

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Examiner respectfully disagrees. Claim 26 recites “a self-windable cable-wrapping adhesive tape comprising...” The transitional term “comprising”, which is synonymous with “including,” “containing,” or “characterized by,” is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) (“like the term comprising,’ the terms containing’ and mixture’ are open-ended.”); *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) (“The transition comprising’ in a method claim indicates that the claim is open-ended and allows for additional steps.”); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) (“Comprising” is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.). Even though Applicant phrases the carrier as “consisting of,” the claimed invention as a whole may contain additional unrecited elements.

Spillane teaches the warp-knitted fabric comprises element II and element III in Figure 1 which is similar to the stitch construction claimed in claim 15 and Figure 2 of Applicant’s specification. Since Rochford teaches that the warp-knitted fabric of Rochford can comprise one or more warps, the Rochford invention may be modified with the stitch construction of Spillane.

Additionally, as set forth above, the ribbed surface and the smooth surface of the adhesive tape appear to be inherent to the tricot knit warp-knitted fabric. Furthermore, as set forth above, the placement of the adhesive coating immediately on the smooth surface would have been obvious to one of ordinary skill in the art at the time the invention was made.

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*Conclusion*

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Y. Choi whose telephone number is (571) 272-6730. The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

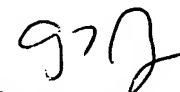


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Peter Y. Choi  
March 7, 2007



ANDREW PIZIALI  
PRIMARY EXAMINER